



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2005

Mr. Francisco R. Canseco  
Escamilla & Poneck, Inc.  
5219 McPherson, Suite 306  
Laredo, Texas 78041

OR2005-01254

Dear Mr. Canseco:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218427.

The United Independent School District (the "school district"), which you represent, received a request for information related to a specified audit conducted by the Department of Education's Office of the Inspector General. You state that the school district has released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that certain information has been redacted from the submitted documents. You do not assert, nor has a review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. Because we can discern the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with

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<sup>1</sup>You also assert that the submitted information is protected under section 552.105(1) and (2) of the Government Code. As section 552.105 pertains to information related to the location or price of property, it is not the proper exception to claim in this instance. Further, we note that you failed to timely assert section 552.105 as required by section 552.301(b). See Gov't Code §§ 552.301(b), .302.

no alternative other than ordering that the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. This section encompasses information that is protected from disclosure by other statutes. Section 1324a of title 8 of the United States Code provides that an I-9 form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 forms that we have marked in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the school district may only release these marked I-9 forms in compliance with the federal laws and regulations governing the employment verification system.

You have also submitted a number of ETA 9035 forms, titled "Labor Condition Applications for H-1B Nonimmigrants," which you have labeled Exhibit C-2, that you assert are an "integral part of the I-9 process." You indicate, therefore, that the Exhibit C-2 information is also confidential under section 1324a of title 8 of the United States Code. We note, however, that section 655.760(a)(1) of title 20 of the Code of Federal Regulations makes these documents expressly public. *See* 20 C.F.R. § 655.760(a)(1). As such, the documents labeled Exhibit C-2 are not confidential and may not be withheld from disclosure under section 552.101 in conjunction with these federal provisions.

Finally, you have submitted a number of "Notice of Action" forms, or I-797C forms, which you have labeled Exhibit C-3. You also assert that these documents are an "integral part of the I-9 process," and indicate, therefore, that the I-797C forms are also confidential under section 1324a of title 8 of the United States Code.

We note that some of the I-797C forms include I-94 forms as attachments to the I-797C forms. Section 1304 of title 8 of the United States Code addresses the confidentiality of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides as follows:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). Section 264.1 of title 8 of the Code of Federal Regulations provides that an I-94 form is a registration form. 8 C.F.R. § 264.1(a). The requestor does not have a right of access to this information. Accordingly, the school district must withhold the submitted I-94 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1304 of title 8 of the United States Code.

We determine, however, that section 1324a of title 8 of the United States Code does not make the I-797C forms expressly confidential for purposes of section 552.101 of the Government Code. Further, our attention has not been directed to any other particular provision under which the I-797C forms are deemed confidential for purposes of section 552.101, nor are we aware of any such provision. *See generally* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). We therefore conclude that no other portions of the I-797C forms are excepted from disclosure under section 552.101 of the Government Code.

In summary, the school district may only release the I-9 forms that we have marked in compliance with the federal laws and regulations governing the employment verification system. The school district must withhold the submitted I-94 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1304 of title 8 of the United States Code. As you make no other arguments against disclosure, the school district must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body


will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblatt  
Assistant Attorney General  
Open Records Division

MAB/ECG/sdk

Ref: ID# 218427

Enc. Submitted documents

c: Ms. Sylvia Rendon  
c/o Francisco R. Canseco  
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(w/o enclosures)